IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

–

WRIT PETITION NO : 4623 of 2005

Between:

Rajaka Seva Sangham, Teki, Kapileswarapuram Mandal,
E.G.District, rep. by its President, Erukonda Veerraju, S/o. Venkanna,
R/o. Teki.

..... PETITIONER

AND

1 The District Collector, E.G.District, Kakinada.
2 The Village Secretary, Teki Gram Panchayat, Eki, Kapileswarapuram

Mandal, E.G.District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a Writ of Mandamus or any other appropriate writ order or direction more particularly in the nature of mandamus declaring; a) the action of the 2nd respondent in issuing Notice No.29/2002 dt. 17.1.2005 directing us to remove from our possession and enjoyment of the land in R.S.No.382/A situated at Teki Village of Kapileswarapuram Mandal, E.G.District as arbitrary, illegal and in violation of principles of natural justice and. b) consequently direct the respondents herein not to disposes us from the possession and enjoyment of the land in R.S.No.382/A of Teki Village of Kapileswarapuram Mandal, E.G.District and set aside the Notice of the 2nd respondent in RIOC.No.29/2002 dt. 17.1.2005 and pass such other order or orders.

Counsel for the Petitioner:MR.CH.DHANAMJAYA

Counsel for the Respondent No.1: GP FOR PANCHAYAT RAJ & RURAL DEV.

Counsel for the Respondent No.2: MR. D.SRINIVAS, Standing Counsel

The Court at the stage of admission made the following ORDER:

The petitioner is the Rajaka Seva Sangham of Teki village, Kapileswarapuram mandal, East Godavari district. It claims to have been assigned an extent of Ac.1.38 cents of land in survey Nos. 382/A1 and A2 through a D-form patta, dated 28.02.1983, by the then Tahsildar. A notice, dated 27.01.2003, was issued by the second respondent requiring the petitioner to remove the huts constructed on the said land, within seven days. The petitioner filed W.P.No.2179 of 2003 in this Court, challenging the same. The writ petition was disposed of on 31.08.2004 setting aside the said notice and leaving it open to the respondents therein to take action against the members of the petitioner Sangam in accordance with law.

The second respondent issued a notice, dated 17.01.2005, requiring the petitioner to remove the huts said to have been illegally constructed, within seven days. Reference was made to the orders of this Court in the writ petition as well as the directions issued by the District Collector. The petitioner challenges the same.

Heard the learned counsel for the petitioner and the learned Government Pleader for Panchayat Raj.

It is true that the notice, dated 17.01.2005, is not properly worded and it does not accord with the purport of Section 98 of the A.P. Panchayat Raj Act, 1994. The intention, however, is very clear. The second respondent felt that certain un-authorized constructions were made, by the members of the petitioner, over the land referred to above. The question as to whether there exists a valid assignment in favour of the petitioner Sangam, in respect of the land, and

whether the structures made upon the land are in contravention of any law, needs to be considered only after requiring the petitioner to submit its explanation. The impugned notice, through which the petitioner is straight away directed to remove the structures, cannot be sustained. Inasmuch as the proceedings were going on since last few years, this Court is of the view that no useful purpose would be served by setting aside the impugned notice or by leaving it open to the second respondent to issue a fresh notice. Instead, the impugned notice can be treated as the one requiring the petitioner to submit its explanation as to why necessary action shall not be taken. The petitioner can submit its explanation and the final action can be made to depend on the outcome of such proceedings.

Hence, the writ petition is disposed of directing that-

a. The notice, dated 17.01.2005, shall be treated as the one directing the petitioner to explain as to why action shall not be taken, for removal of the alleged un-authorized structures;

b. It shall be open to the petitioner to submit its explanation within three weeks from today;

c. The second respondent shall take further steps, only after passing an order, duly considering the explanation submitted by the petitioner. Meanwhile, the respondents shall not take any coercive steps to remove the existing structures;

d. There shall be no order as to costs.

10.03.2005

Note:

Issue CC by 11.03.2005

(BO)

ksld

To

1 The District Collector, E.G.District, Kakinada.
2 The Village Secretary, Teki Gram Panchayat, Eki, Kapileswarapuram Mandal, E.G.District.

3 Two CCs to the Government Pleader for Panchayatraj and Rural Development, A.P.High Court Buildings, Hyderabad. (OUT).

4 Two CD copies.